

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

Limited Distribution

ACCESSION OF PORTUGAL AND SPAIN TO THE EUROPEAN COMMUNITIES

Report of the Working Party

1. The Working Party was established by the Council on 12 February 1986 "to examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities, taking into account other relevant GATT documents, and to report to the Council."
2. The Working Party met on 8 July, 7-8 October and 3 December 1986, 15 May 1987, 17 February, 20 April, 27 June and 30 September 1988 under the chairmanship of Ambassador F. Jaramillo (Colombia). Detailed summaries of the discussion which took place at these meetings can be found in Spec(86)46 and Corr.1, Spec(86)60, Spec(87)2, Spec(87)31, Spec(88)15, Spec(88)28 and Spec(88)42.
3. The following documentation (L/5936 and addenda) was supplied to the Working Party by the delegation of the European Communities:
 - (a) The Treaty of Accession of Portugal and Spain to the European Communities;
 - (b) Council Regulation No.3330/85 of 5 December 1985 amending the Common Customs Tariff of the Communities;
 - (c) Import statistics in value and quantities for the EC/10, Spain and Portugal broken down by GATT country of origin for the years 1983, 1984 and 1985;
 - (d) A concordance table between the Common Customs Tariff of the EC/10 and the corresponding Spanish and Portuguese statistical codes and rates of duty;
 - (e) Lists of restrictive non-tariff measures applied by Portugal and Spain before and after their accession to the European Communities;
4. The replies to questions put by contracting parties in accordance with standard GATT practice in such cases, were made available in L/5984 and Corr.1 and L/5984/Add.1-2. During the proceedings of the Working Party, the following documents were circulated:

- (a) Notes by the Communities on the question of tariff incidence (Table III and Spec 88(28), Annex);
- (b) Note from the United States on the tariff impact on contracting parties' trade of Spanish and Portuguese accession to the European Communities (Tables I and II);
- (c) Note from the United States summarizing Spanish industrial quantitative restrictions before and after accession to the European Communities (Spec(87)2, Annex III);
- (d) Note from the United States analysing the EC Commission's notification (L/5936/Add.5) on quantitative restrictions maintained in Spain (L/6172);
- (e) Note from Japan on the situation with respect to discriminatory quantitative restrictions and other non-tariff measures prevailing after the accession of Portugal and Spain to the European Communities (Spec(87)31, Annex I);
- (f) Notes by the secretariat on the documentation submitted to previous working parties which had examined customs unions and free trade areas (Spec(86)61 and Add.1);
- (g) Communication from the United States, on behalf of a number of delegations, containing some suggested conclusions for the Working Party (Spec(88)33);
- (h) Note from the United States analyzing quantitative restrictions maintained in Spain before and after accession (Table IV);
- (i) Note from the European Communities analysing Spanish quantitative restrictions maintained before and after accession (Table V).

I. Introductory Statements by the Parties to the Treaty of Accession

5. At the first meeting of the Working Party, the representative of the European Communities stated that the enlargement provisions were fully consistent with Article XXIV of the General Agreement and with paragraph 5(a) thereof in particular. The import régimes which had been in force in the two new member States prior to accession had given substantial protection. The tariffs had on average been at a level much higher than in the Communities. In addition, the two countries had had relatively few tariff bindings. In many cases, the other regulations of commerce were not totally transparent and their effects were sometimes uncertain or even restrictive. As a result of their accession to the Communities, Spain and Portugal would be effecting substantial tariff reductions and liberalizing

other regulations of commerce, thus opening their markets to the benefit of contracting parties. Upon accession to the Communities, Portugal had eliminated restrictions which had been maintained because of balance of payments difficulties. Spain had liberalized its fiscal policies and adopted the value-added tax which was a major contribution to a trade-neutral system. The conclusion that had to be drawn was that, at the end of the transitional period, the general incidence of duties and other regulations of commerce in the two countries would be lower and less restrictive than before. If this conclusion were not shared by other contracting parties, then it would be hard to imagine any customs union or enlargement of a customs union which could be acceptable.

6. The representative of the European Communities considered that Article XXIV:5 only required an examination on the broadest possible basis. The task was general, namely to reach a view on whether the general incidence of customs duties and regulations after enlargement was on the whole more or less restrictive than before. Even if a negative incidence were shown to be the case for certain items, such as when duties were increased or replaced by variable levies, one had to consider whether these effects were not balanced by the effects of other changes in the tariff sector taken as a whole. An overall appreciation of effects of changes in tariffs and regulations of commerce had to be made. In assessing general incidence, one had to avoid too static an analysis and to take into account the trade-creating effects of the establishment or enlargement of a customs union.

7. The representative of Spain stated that in 1971, the CONTRACTING PARTIES had recognized the agreement between his country and the European Economic Community, whose minimum objective had been "the creation of a free-trade area which at a later stage, would be developed into a customs union" (BISD, 18S/166). After a period of reflection, his country had decided to continue its efforts towards fuller integration with the economic area to which it belonged from many points of view. Spain was convinced that the integration fulfilled the requisites of Article XXIV of the General Agreement. With accession to the Communities, it would be possible for Spain to assume more fully GATT obligations in the tariff and non-tariff areas. After the Tokyo Round, Spain had undertaken to bind approximately 40 per cent of its tariff positions. By acceding to the Communities, almost all tariff positions would be bound at a much lower level. Spain had become a party to four of the MTN Codes (Customs Valuation, Technical Barriers to Trade, Anti-Dumping and Subsidies and Countervailing Measures). Integration with the Communities required that it accede to and apply all the instruments negotiated in the Tokyo Round. While Spain had signed the first Multifibre Agreement, it had not become a party to either of its Protocols of Extension. It would now need to apply the disciplines arising out of instruments relative to trade in textiles. Finally, Spain would immediately start applying the Communities' various systems of preferences to a large number of developing countries. All this was reflected in a substantial opening of Spanish markets, which would surely be rightly appreciated by Spain's trading partners, given the present economic situation.

8. The representative of Portugal stated that accession to the European Communities successfully completed a period of progressive approach to European integration. Portugal had become a founding member of the European Free Trade Association in 1960, and had signed a free-trade agreement with the European Economic Community in 1972. Accession to the Communities was a logical consequence of this process of liberalization. It implied a new orientation for Portugal's external economic policy. His country intended to participate to the fullest extent in the Communities even though a transitional period and specific modalities for flexibility had been envisaged in order to avoid excessive costs to its economy. Portugal believed that the solutions found for the adaptation period complied with the requirements of Article XXIV of the General Agreement. The previous trade régime had been characterized by a considerable degree of interventionism and by recourse to administrative and fiscal practices aiming at providing protection for the weaker sectors of the economy. Adoption of the "acquis communautaire" would also have positive effects for Portugal's foreign trade with other contracting parties. The direct effects of participation in a customs union such as the ones stemming from the adoption of the Common Customs Tariff (CCT), had to be stressed. The former Portuguese tariff had been on average 30 per cent higher than the CCT and alignment with the latter would therefore result in a significant dismantling of tariff barriers. After accession, Portugal had become a donor by adopting the Communities' GSP scheme, thus improving market access for beneficiary countries. The positive effects of changes in the tariff and non-tariff areas would bear benefits for all, and enable Portugal to assume GATT disciplines more fully.

II. The provisions of the documents concerning accession

9. The Working Party examined, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities. The following paragraphs set out the main points made in the discussion. A fuller record will be found in the notes on individual meetings of the Working Party.

A. Tariffs

10. At the first meeting of the Working Party, which was held on 8 July 1986, the representative of the European Communities stated that in the new Common External Tariff of the EC/12 contained in EEC regulation 3330/85, a weighted average tariff, which was trade-neutral by definition, had been introduced for 85 per cent of the total trade of the EC/12. The duty rates of the EC/10 had been retained for items which amounted to less than 5 per cent of the total imports of the EC/12. For these items, there would be no change in incidence for the EC/10; the only possible change in incidence could arise in Spain and Portugal whose trade in relation to the EC/12 was minimal. Items which amounted for 6 per cent of the total had been left blank. Finally, items subject to a variable levy (on which a weighted average tariff had not been calculated) accounted for an additional 2 per cent of the total imports of the EC/12. Whatever the incidence of these levies might be, it was highly unlikely that 2 per cent

of trade would be a significant factor in any overall analysis to be conducted by the Working Party. The application of the new tariff, which constituted the Communities' offer in Article XXIV:6 negotiations, was suspended for a period of two years, or pending the outcome of these negotiations. As long as the new tariff was suspended, the duties applied would be those of the EC/10 to which the new members were aligning, by implementing substantial tariff reductions from often prohibitively high levels. The Working Party was therefore in a position to reach a solid, albeit preliminary, conclusion about the tariff incidence of the enlargement.

11. Some delegations expressed the view that the Working Party could not reach conclusions on the incidence of tariff changes until the blanks had been filled in the Communities' offer. They considered that these blanks which covered some 96 non-industrial items, represented some of the Communities' most important concessions in the sectors of agriculture and fisheries. The variable levy category which had been referred to as constituting 2 per cent of the Communities' imports, represented 30 per cent of one participant's total exports to Spain. The introduction of variable levies in Spain and Portugal, as part of their adoption of the common agricultural policy would constitute a serious new obstacle to trade which would disadvantage all exporters of agricultural products. It could therefore not be presented as a trade liberalizing move. The representative of the European Communities replied that they were the biggest importer of agricultural products in the world and would remain so after enlargement.

12. Some delegations were also concerned at the interim agreement reached by the Communities and the United States on access of certain agricultural products into Spain and the rest of the Communities. They considered that such a bilateral agreement could have detrimental effects for third parties, especially those which had negotiating rights under Article XXVIII:4. The representative of the European Communities replied that contracting parties were entitled to resolve problems in a way that was acceptable to both sides and that if a result was achieved in such bilateral negotiations, it would be notified to other contracting parties like the result of any other Article XXIV:6 negotiation. The Communities did not intend to deny any country its negotiating rights and would engage in appropriate negotiations. Furthermore, the terms of the temporary arrangement would be available to all contracting parties on an erga omnes basis.

13. With respect to industrial products, some delegations were concerned that whereas the overall result of the adoption of a trade weighted average tariff might be statistically neutral, the changes could be damaging from the standpoint of a trading partner's particular trade interests. The Working Party had to examine the impact of enlargement on particular trading partners as well as on all contracting parties. Furthermore, Article XXIV:6 did not cover changes in unbound duties. The rate applied by the EC/10 was extended to Spain and Portugal when the one applied by these countries had not been bound, though at a lower level. Suppliers of

affected products, which included chemicals, computer parts, coal and related products, would therefore face a situation which was more restrictive than the one prevailing before accession. Moreover, even though the weighted average tariff adopted for 85 per cent of the Communities' total trade might be trade-neutral, the overall incidence could be negative if the trade effect on the remaining 10 or 15 per cent of EC imports was negative.

14. The representative of the European Communities considered that the Article XXIV:6 procedure was designed to deal with increases in, and withdrawals of bound tariffs. On the other hand, the Working Party's task was to carry out a general examination of changes in incidence, as required by Article XXIV:5(a). In this exercise, the total trade of the EC/12 had to be taken into consideration. Even though the items subject to variable levies might account for a substantial portion of the exports of one contracting party to Spain and Portugal, this did not alter the fact that of all the import trade of the EC/12, only 2 per cent was subject to levies. The same was true for tariff lines where Spanish and Portuguese duties might be increasing. Other participants repeated that the Article XXIV:5 exercise could not be conducted without looking at the specific effects of enlargement on individual contracting parties. One participant stated that one-third of his country's trade with the enlarged Communities would be subject to higher duties and restrictions, which was significant.

15. As part of the examination carried out by the Working Party, one delegation submitted analyses prepared by its authorities (see Tables I and II below), according to which the global incidence of EC/12 duties would be higher after enlargement than before. This delegation stated that in its calculation it had adopted the commonly used GATT approach of measuring changes in duties collected by multiplying the trade coverage for a tariff item by the change in duty for that item. In making these computations which had assumed that the EC/10 rates would be extended to the EC/12, the ad valorem equivalents of the variable levies at the time they had gone into effect in Portugal and Spain, had been used for products subject to the levies.

TABLE I

An Overview of the Effect of Extending
the Tariff System of the EC/10 to All
Non-EC GATT Contracting Parties' Trade with
Spain and Portugal: (1983/84 Trade)

Duties collected basis
Note from the United States

Global trade with Spain and Portugal where tariffs are decreasing	Duties collected or foregone (millions of ECUs)
a. Bound	-454.5
b. New bindings	-281.8
c. Unbindings	-0.7
d. Remaining unbound	0.1
	-737.1
Global trade with Spain and Portugal where tariffs are increasing	
a. Bound	10.3
b. New bindings	166.2
c. Unbindings	623.2
d. Remaining unbound	586.6
	1386.3
Global trade with Spain and Portugal where tariffs remain the same	
a. Bound	0.0
b. New bindings	0.0
c. Unbindings	0.0
d. Remaining unbound	0.0
	0.0

TABLE II

An Overview of the Effect of Extending
the Tariff System of the EC/10 to All
Non-EC GATT Contracting Parties' Trade with
Spain and Portugal: (1983/84 Trade)

Trade coverage basis
Note from the United States

Global trade with Spain and Portugal where tariffs are decreasing	Total imports of Spain and Portugal (millions of ECUs)
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a. Bound	4597.2
b. New bindings	3294.6
c. Unbindings	85.1
d. Remaining unbound	<u>5.0</u>
	7981.9
Global trade with Spain and Portugal where tariffs are increasing	
<hr/>	
a. Bound	156.1
b. New bindings	2044.6
c. Unbindings	723.8
d. Remaining unbound	<u>598.8</u>
	3523.3
Global trade with Spain and Portugal where tariffs remain the same	
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a. Bound	399.9
b. New bindings	3815.0
c. Unbindings	0.6
d. Remaining unbound	<u>1.2</u>
	4216.7

16. The Working Party suspended its examination pending progress in the Article XXIV:6 negotiations. At the meeting which was held on 17 February 1988, the representative of the European Communities introduced the new schedule of concessions of the EC/12 which had been submitted to the GATT in December 1987 and stated that tariff negotiations had been completed with most of the Communities' trading partners. The EC/10 rates had been retained for substantially all the trade of the EC/12 and the blanks had been filled. In 1986 and 1987 there had been a considerable reduction of tariffs in the two acceding countries and imports into both Spain and Portugal had increased substantially, though this could not entirely be attributed to better market access. When assessing the general incidence of tariff changes, one had to bear in mind that imports into Spain and Portugal only amounted to 7 per cent of the total imports of the EC/12 and that therefore 93 per cent of the EC/12 imports were not affected by tariff changes, since the new members were aligning their tariffs to the EC/10 tariff and the trade-weighted average tariff had been abandoned. As the previous tariff rates of Spain and Portugal were being brought down substantially and bound to a much higher degree than before, the Working Party was in a position to reach the positive conclusion that on the tariff side, accession conformed with the requirements of Article XXIV:5(a). The representative of the European Communities rejected the approach which assessed the effect of tariff changes by looking at duties collected, which was neither more accurate nor more appropriate in the context of Article XXIV:5 than the traditional method of assessment by duty rates and trade coverage. Duty collections were one of the methods used in Article XXVIII tariff negotiations where the object was to calculate the value of concessions withdrawn and those offered as replacement to make a specific negotiated bargain. But the objective under Article XXIV was to arrive at a more general picture of the incidence of tariffs, which was a different case and did not require the same technique. At a technical level the duty collections method also presented problems: it was not evident that an analysis of future duty payments (estimated) was the same as one that measured tariff incidence - the former was by necessity based on a static trade situation whereas the tariff changes in themselves might lead to different trade patterns significantly different from those indicated in Table I. Furthermore, the representative of the European Communities stated that the measurement of duty collections in the case of levies was notoriously uncertain, and duties actually collected on such imports in Spain had, in fact, been considerably less than the figures shown. The estimates as regards changes in unbound duties also needed to be reconsidered, given that Spain and Portugal had been free to increase these rates prior to accession and these figures could thus have been manipulated to show a positive rather than a negative result. The net result, 650 million ECU in extra duty payments was, therefore, subject to wide margins of error and the methodology was dubious. According to their own analysis (Table III) which measured the trade covered by tariff changes, tariffs had only increased on half per cent of the total trade of the Communities which could not lead to a negative assessment of general incidence of tariff changes for the CONTRACTING PARTIES as a whole. Other representatives considered that Article XXIV:5(a) required a comparison

between the post-accession tariff and the tariffs which had been in effect before accession in the individual constituent parties of the customs union. On the basis of the available information, they did not share the assessment of tariff incidence which had been outlined by the Communities. The delegation which had submitted the analysis concerning the tariff impact of accession, stated that the assumptions made in this analysis had been borne out in the Article XXIV:6 negotiations and the negative conclusion reached in the analysis remained valid.

Table III

Note from the European Communities

This table shows the trade by tariff category from all GATT countries covered by the outcome of the Article XXIV:6 negotiations by which it was decided to extend the tariff of the Community of Ten to Spain and Portugal. The figures are imports expressed in millions of ECU and cover the period 1983/85.

	Total	Spain	Portugal	EC 10
Total imports from GATT countries	17 094	13 274	3 820	(239 831)
<u>of which:</u>				
1. Bound tariffs falling	4 895	4 281	614	
2. New bindings:				
at lower level	3 839	2 101	1 738	
at same level	4 318	4 065	253	
at higher level	2 136	1 741	395	
Total 1. and 2.	<u>15 188</u>	<u>12 188</u>	<u>3 000</u>	
3. Unbindings	701	701	-	
4. Bound tariffs rising	197	84	113	
Total 3. and 4.	<u>898</u>	<u>785</u>	<u>113</u>	
Bound tariffs remaining bound at same level	348	230	118	
Unbound tariffs remaining unbound	660	72	588	

17. Some delegations stated that they were still engaged in Article XXIV:6 negotiations or consultations with the European Communities, and that until these were completed, it would be premature for the Working Party to draw conclusions on the tariff aspect of enlargement. The representative of the European Communities replied that outstanding Article XXIV:6 renegotiations related to a very limited volume of trade which would not affect the exercise carried out by the Working Party. He recognized however that delegations could reserve their rights under Article XXIV:6, since the Communities had reserved their own right to modify the schedule of concessions they had submitted, if that proved to be necessary in the course of negotiations.

18. Some delegations stated that they could not reach conclusions on the incidence of tariff changes until the Working Party had been supplied with a breakdown of import statistics into Spain and Portugal between preferential and m.f.n. suppliers. After the accession of Spain and Portugal to the Communities, certain countries which had been m.f.n. suppliers would become preference receivers, but should not be credited with a benefit because their improved access to the Spanish and Portuguese markets would not be due to a reduction of the m.f.n. duty but to the preference obtained after enlargement. This preferential treatment would result in a significant degree of trade diversion to the detriment of third countries. The representative of the European Communities replied that the preferences that Portugal and Spain would provide were a requirement of Article XXIV and would not alter the fact that their markets were substantially opened as a result of accession.

B. Quantitative restrictions

19. Some delegations expressed concerns which related to the introduction in Portugal and Spain of new quantitative restrictions some of which were discriminatory and inconsistent with Articles XI, XIII and XXIV:4. Even if certain restrictions had been eliminated, they considered that new forms of protection were introduced, contrary to the Communities' assertion that the requirements of Article XXIV:5 had been met for other regulations of commerce. In particular, some delegations considered that since Article XXIV did not waive contracting parties from their obligations under other GATT provisions, the Communities should eliminate these restrictions before the Working Party completed its examination of accession.

20. The representative of the European Communities replied that no new discriminatory quantitative restrictions had been imposed in Spain since its accession to the Communities and that under the old Spanish import régime, the management of border measures had lacked transparency, leading to a situation under which exporters might have felt free to export to Spain even though restrictions could be imposed at any time. A specific trade régime had existed in Spain for imports from state-trading countries and other restrictions were justified by bilateral agreements. By adopting the Communities' common commercial policy, Spain was making a substantial move towards liberalization which would continue throughout the transitional period. As could be seen from the Community's submission

(L/5936/Add.5), before acceding to the Community, Spain had maintained a total of 430 quantitative restrictions on imports from other contracting parties, 328 of which had already been or would be liberalized by the end of the transitional period. Of these, 238 had been maintained before accession on imports from state-trading countries, and 333 on imports from another contracting party. Two hundred of these restrictions were liberalized upon accession or would be liberalized during the transitional period. At the same time, the Communities' own régime for state-trading countries which was justified under the Protocols of Accession of these countries to the GATT, was becoming more transparent and would eventually be eliminated.

21. Some delegations did not agree with the European Communities' view that discriminatory quantitative restrictions could be justified by their countries' Protocols of Accession to the GATT. To the contrary, they argued that these Protocols required that discriminatory quantitative restrictions maintained by contracting parties against their countries be eliminated and that their discriminatory element not be intensified. They also considered that the Treaty of Accession required Spain to introduce after accession discriminatory quantitative restrictions against imports from their countries, thus acting inconsistently with Article XXIV:4. Prior to accession Spain had not maintained such restrictions as was confirmed by several notifications which it had made. In their opinion Article XXIV did not require that a country acceding to a customs union align its import régime with the more restrictive and discriminatory régime of that customs union. Moreover, newly established GATT-inconsistent measures could not be traded off against the alleged reduction of other barriers. One delegation also stated that its country was a founding member of the GATT, but that nevertheless its exports to Spain had been subjected to new discriminatory quantitative restrictions after it acceded to the Communities. Another delegation stated that Articles 177:3 and 177:5 of the Treaty of Accession, its Annexes and EC Regulations 7334(85) and 175(86) allowed or required Spain to introduce discriminatory quantitative restrictions inconsistent with Article XIII. These restrictions covered 94 headings or sub-headings which accounted for one fourth of its country's total exports to Spain.

22. One delegation stressed that there were no bilateral agreements presently in force between its country and Spain or Portugal which could legitimize the discriminatory quantitative restrictions maintained against it by these two countries. This delegation was also concerned about the differential dates for the liberalization of discriminatory quantitative restrictions. It therefore called upon the Communities to eliminate such restrictions immediately, rather than at the end of the transitional period. It also stressed that because these measures were GATT-inconsistent, they could not be included in the assessment of the incidence of changes in "other regulations of commerce" which had to be carried out under Article XXIV: 5(a). The representative of the European Communities replied that imports into Spain from the country in question had risen substantially since it had acceded to the Communities, which was

an indication of improved market access. While there were some differences in the dates applicable to different contracting parties for the liberalization of some restrictions, the trade involved was of minor importance and would not alter the fact that the incidence of restrictions in Spain would be lower after accession than before, and would be still lower at the end of the transitional period. He considered that Article XXIV:4 did not constitute an obligation but an objective and did not preclude members of a customs union from erecting barriers to trade if their overall incidence was less restrictive than the ones which had prevailed before the customs union was established.

23. One delegation pointed to its authorities' findings that 70 new quantitative restrictions had been introduced in Portugal; in Spain, 241 tariff items were covered by post-enlargement quantitative restrictions, affecting about US\$500 million of its country's exports. Of this trade, only about US\$83 million had been subject to actual restrictions prior to enlargement. The rest had to be considered new restrictions on which this delegation reserved its GATT rights. A note citing specific restrictions was also made available to the Working Party (Spec(87)2, Annex III). The representative of the European Communities replied that the products covered in this notification had not in fact been unrestricted previously. The notification was based on a private Spanish publication which contained erroneous information on the old import régime.

24. Some delegations took issue with the European Communities' contention that "credit" was owed to the Communities for the relaxation of non-tariff barriers which had resulted from the accession of Portugal and Spain. The trade liberalization effect of the removal or modification of certain practices was minimal in the agricultural area, since they would be replaced by the Common Agricultural Policy's instruments which would relegate non-EC suppliers to the status of residual sources. In particular, one representative stated that variable levies which were introduced in replacement of the previous administered régimes generally excluded imports. Comparing previous Portuguese notifications to the Committee on Trade in Agriculture with the information submitted by the Communities on the liberalization of quantitative restrictions in that country, he considered that a positive assessment in terms of Article XXIV:5(a) could not be reached. The representative of the European Communities stated that the extension of the Common Agricultural Policy to Spain and Portugal would affect only a number of products in the agricultural sector. Other changes in tariffs and other practices - some later in the transition process - would mean that the trade effect in that sector as a whole would be positive. Some delegations stated that the elimination of restrictions which had affected industrial products would primarily benefit the other members of the Communities and the EFTA countries with which the Communities had free-trade arrangements. Some measures which were being eliminated were inconsistent with the GATT and had to be phased out without compensation, in view of the standstill and rollback commitments undertaken under the Ministerial Declaration launching the Uruguay Round. The representative of the European Communities replied that it could not be assumed that the measures which were being liberalized were GATT-inconsistent.

C. Regulations of commerce other than tariffs and quantitative restrictions

25. Some delegations sought clarification from the Communities concerning certificates of origin and the dismantling of state monopolies in the acceding countries. The representative of the European Communities replied that certificates of origin might be required in accordance with Community legislation and that the dismantling of certain state monopolies carried out in accordance with the Treaty of Accession, would be favourable to third countries.

26. On the basis of the past experience obtained from earlier enlargements of the EC, some delegations expressed doubts about the contention the EC put forward in reply to their questions (L/5984 and Add.1-2), that the implementation of the CAP in Spain and Portugal would not have significant effects on temperate agricultural production in those countries. The representative of the European Communities responded that the purpose of the meeting was not to examine the CAP, but to examine the incidence on Spain and Portugal of the totality of the Community's import regulations. The variable levies applied in Spain and Portugal since 1 March 1986 had replaced all existing quantitative restrictions and similar measures and were more transparent than the previous régimes. Spain's and Portugal's import requirements would continue to be met in large part from third countries. Some delegations asked what were the expected effects on imports of income and price support measures. They considered that such arrangements should be examined by the Working Party, because Article XVI recognized that they could increase exports and reduce imports. However, the representative of the European Communities rejected this suggestion, on the grounds that price and income support arrangements were not a regulation of commerce. In view of the realities of the market there were constraints on production in the new member States and no Community incentives to encourage production. Assumptions made on the basis of past experience were flawed because the Communities had moved over the years from a situation of deficit in certain products to self-sufficiency which was reflected in internal debates about reform.

27. In reply to questions which related to global fish quotas and the 15 per cent annual increase in imports from other member States required in Spain under the Treaty, the representative of the European Communities stated that the global quotas had been set for the transitional period, during which certain arrangements which had been incompatible with EC membership would be phased out. The 15 per cent figure was a purely procedural threshold for determining the Community authority competent to take intra-Community safeguard measures in the case of a disruption of the markets of the new members.

28. One member of the Working Party stated that the system of quantitative controls introduced in Portugal for oilseeds was more restrictive than the import régime which was in effect prior to enlargement. He also asked what could have been expected to happen in the absence of the quantitative

controls whose objective according to the EC, was to prevent disorganization of the market. The representative of the European Communities replied that the present system of quantitative controls was not substantially different from the previous one, except that it was more transparent. Its purpose was not to restrict imports but to control the marketing of a product which had to be subject to a special régime during the transitional period. Before accession, a balance had been maintained between the consumption of olive oil and other vegetable fats obtained from oilseeds. Dismantling immediately the régimes which had been in force for many years in Spain and Portugal, might have been disruptive and it had therefore been considered appropriate to adopt a five-year transition period, at the end of which the Community system would be applied, and there would be a variable levy for olive oils and duty-free entry without quotas for other oils. The introduction of production aids for oilseeds in both countries was not expected to change the situation which had prevailed before accession because of the limitations put on these aids.

29. Some members of the Working Party stated that during the transitional period, the Communities would reserve to themselves a portion of the grain and cereals market which they had not had before. In the end, this market would be closed through the levies. They considered this to be a definite worsening of the situation, in terms of Article XXIV:5. The representative of the European Communities replied that without this provision the Communities could have been excluded from the Portuguese market which was inconceivable for a customs union consistent with Article XXIV. However, this import requirement was temporary, and would be replaced by the variable levy at the end of a four-year transitional period.¹ The introduction of the variable levy on imports of grains into Spain, which had occurred on 1 March 1986, was not expected to have substantial effects. Some representatives took issue with the view that the extension of the CAP would not significantly change production in Spain and Portugal. The artificial incentives inherent in the CAP would have the same effects in Spain and Portugal as they had had in the rest of the Communities. This was a fact of which the Communities and the new member States had been aware in their deliberations leading to the Treaty. The artificially increased production would have damaging effects for third countries both in the EC markets and in third country markets.

30. Some delegations asked what were the expected effects of production aids and Community reference prices for fruits and vegetables. The representative of the European Communities replied that the production aids implemented during the transitional period were not comparable to the one

¹The Communities later indicated that the application of this measure had been suspended.

in force before accession, and that a limitation had been put on their level during this period. At the end of the transition period, the Community-wide systems would apply. The reference price mechanism would have no effect on production and only aimed at controlling imports at abnormally low prices. In response to a question about imports of citrus and orange juice from third countries, he stated that the enlarged Communities' needs of these products would continue to be met with imports from third countries.

31. Replying to a question which dealt with sugar production in Spain and Portugal, and the effect on it of export refunds and production quotas, the representative of the European Communities stated that while she could not make definite forecasts, the conditions in the world market for sugar did not provide encouragement for additional production.

32. Asked about the expected effects on production and trade of the support régime for sheepmeat and levies applied to imports of other meats and dairy products, the representative of the European Communities stated that given the market situation, increases in production could only result from increases in domestic demand. The levy system had been applied in Spain and Portugal since their accession and the Communities' bilateral agreements with third countries for the supply of dairy products, would be renegotiated to take the enlargement into account.

D. Other points

33. During the examination, a number of other specific points were raised. Referring to the requirement contained in Article XXIV:7(a), some participants requested the European Communities to provide information on the effects of variable levies and the breakdown of increases of imports into Spain and Portugal from the other members of the Communities and countries with which the Communities had free-trade or association agreements. The representative of the European Communities considered that they had submitted enough material for the Working Party to reach conclusions.

34. It was accepted that if the Treaty were implemented as planned, a customs union would be put in place after 10 years. However, some representatives considered that the Treaty of Accession was an interim agreement under Article XXIV:5(c) which would result in a full customs union only once it was fully implemented. Therefore, and as provided for in Article XXIV:7(b), they considered that the parties to the agreement should not put it into force if they were not prepared to modify it in accordance with any recommendations that the CONTRACTING PARTIES might make. On the other hand, the representative of the European Communities argued that the Treaty of Accession of Portugal and Spain was a definitive agreement providing for the establishment of a full customs union at the end of a transitional period. In his view, the requirements of Article XXIV:8(a) would be largely fulfilled after seven years and totally achieved, even for sensitive products, after 10 years. However, the European Communities acknowledged the right of the Working Party to make recommendations.

35. Several representatives stated that there were other provisions of the General Agreement, such as Articles I, III, XI, XIII, XVI and XVII which were relevant to the Working Party. In particular they wondered whether in the opinion of the European Communities, Article XXIV provided a derogation from the obligations arising out of other GATT provisions. The representative of the European Communities considered that Article XXIV applied in the light of other provisions of the GATT. However, in his opinion, the Working Party's task was limited to making an assessment of the general incidence of measures as required by Article XXIV:5(a). The Chairman recalled that the mandate of the Working Party was "to examine, in the light of the relevant provisions of the General Agreement, the provisions of the documents concerning the accession of Portugal and Spain to the European Communities, taking into account other relevant GATT documents and to report to the Council".

III. Final statements

36. One member of the Working Party noted that Article XXIV provided for departures from the most-favoured nation principles subject to certain conditions. The condition of not raising barriers to the trade of other contracting parties contained in Article XXIV:4 was clear and one could not ascribe to it any special subtleties or reservations. While each new customs union or free trade area agreement had to be examined on its merits, past experience was relevant when an agreement provided for the simple extension of existing policies to new members of an established customs union. The extension of the Communities' Common Agricultural Policy to Spain and Portugal would result in an increase in barriers to third country trade in those countries and a major negative impact on his country's export opportunities generally. No matter how managed and opaque the pre-accession import arrangements of Spain and Portugal for agricultural products, it was not tenable to argue that adoption of the import levy system was a trade liberalizing move. His delegation had repeatedly sought to have the Working Party address the impact of other measures, such as domestic subsidies. The Communities had rejected these suggestions but sought to have the Working Party take into account other internal measures such as the introduction of VAT in Spain and Spanish fiscal liberalization. This lack of balance in the Communities position prevented a comprehensive assessment by the Working Party. His country could not agree that the agricultural sector could be treated specially and excluded from trade liberalization initiatives. Broader concerns about increased post-enlargement quantitative restrictions had been supported by evidence provided by other members of the Working Party. His country could not accept the Communities' contention that the extension of the tariff of the EC/10 to the EC/12 was compatible with their obligations under Article XXIV:5(a) regardless of the effect on the tariffs of Spain and Portugal. Article XXIV:5(a) required a comparison with the pre-accession tariffs of the constituent territories and the relative size of those territories was not a relevant factor. His country also could not subscribe to the Communities' claim that a deterioration in access for a major item could be adequately compensated by improvements in access in a

large number of items of minor trade interest. Nor could it accept that credit was owed to the Communities because of their own decision to proceed with enlargement. It was concerned by the Communities' failure to provide information which separately identified trade taking place under preferential conditions. The exclusion of preferential trade was necessary when making the Article XXIV:5(a) assessment of the impact of accession as well as for the purpose of determining supplier rights in the negotiations conducted under Article XXIV:5. The same member of the Working Party said that the Communities had consistently argued that issues raised by other participants were beyond resolution and that the Working Party only need write a report reflecting all views, instead of attempting to reach definite conclusions. Under Article XXIV:7(a), the burden of proof about the GATT compatibility of an agreement rested with the parties to the agreement. At the present stage it was not possible to reach the conclusion that accession conformed with the GATT, rather a tentative conclusion might be otherwise. However, his country was prepared to accept the request of the Communities that a static analysis be avoided and suggested that the Communities prepare annual or biennial reports on the implementation of the Treaty of Accession, as was customary for free trade areas and had been done with respect to the implementation of the Treaty of Rome. His delegation reserved its GATT rights in relation to the Treaty.

37. Another member of the Working Party stated that the General Agreement put constraints on contracting parties forming customs unions, because Article XXIV provided a fundamental derogation from the m.f.n. principle, though not from other GATT provisions. In accordance with Article XXIV:5, and in order to ensure that the Communities met their obligations to third countries, the Working Party had undertaken a detailed examination of the terms of accession of Portugal and Spain to the Communities, with a view to determining whether duties and other regulations of commerce were, on the whole, higher than prior to enlargement. The factual evidence pointed to the conclusion that on the whole, third country suppliers to Spain and Portugal would be worse off as a result of enlargement. The analyses presented by his delegation, on the basis of EC data, demonstrated that in duties collected terms which was the standard commonly used for these calculations, there was a net increase of ECU 650 million in payments by third countries. The fact that this significant damage to third countries was heavily concentrated in a few important product areas made it all the greater. The element of improvement came in the form of relatively small duty decreases which in many cases would be offset by trade diversion. Therefore, his delegation's calculations understated the harmful effects of enlargement. The situation with respect to other regulations of commerce was equally disquieting. New quotas on 139 industrial products affecting hundreds of millions of ECUs of third country trade had been introduced in Spain, without any GATT justification (See Table IV below). With respect to trade in agricultural products, the Communities were once again shifting the burden of the Common Agricultural Policy onto third countries, through a variety of devices such as quantitative restrictions on soybeans in Portugal, or variable levies on numerous products including feedgrains. In response to all these facts, the Communities had stated only that third countries would in the long-run benefit from enlargement. He called on the Communities to redress this situation, both with respect to tariffs and other regulations of commerce, and reserved his delegation's rights to revert to it at a later stage.

Table IV

Note from the United States

Analysis of Spanish Quantitative Restrictions
Before and After Spanish Accession to the European Community
Affecting the Trading Rights of GATT Contracting Parties

June 16 1988

<u>Status of Restriction</u> ¹	<u>Number of Products</u> ²	
	<u>Agriculture</u>	<u>Non-Agriculture</u>
<u>Pre-Accession Status</u>		
I. Quantitative Restrictions Applied to, GATT Trade by Spain in December 1985 ³	77	34
<u>Post-Accession Status</u>		
II. Pre-Accession Quantitative Restrictions Terminated After Accession	41	3
III. Pre-Accession Quantitative Restrictions Remaining After Accession	36	31
IV. Quantitative Restrictions Newly Introduced After Accession	19	139
V. <u>Total Quantitative Restrictions in Spain in 1988</u> ⁴	55	170
VI. Number of Post-Accession Quantitative Restrictions that are Transitional ⁵	15	42
VII. Number of Post-Accession Quantitative Restrictions that are Permanent	40	128

¹The United States has found no information that these restrictions imposed before or after accession are justified under Article XI.

²This summary uses the four-digit tariff categories used by the European Community in L/5936/Add.5 dated 24 February 1987.

³Source: Various Resolutions, Decrees, and Orders published since 1934 in the Boletín Oficial del Estado of the Government of Spain.

⁴Source for Post-Accession Quantitative Restrictions: Government of Spain, Boletín Oficial del Estado, 21 April 1987.

⁵Source for Temporary Quantitative Restrictions: The Spanish-EC Treaty of Accession.

Table V

Note from the European Communities

Analysis of Spanish Quantitative Restrictions before
and after Spanish Accession to the European Community

1. The United States has submitted an analysis, dated 16 June 1988, on the position regarding quantitative restrictions in Spain. This was circulated in the meeting of the Working Party on 27 June.
2. The Community considers that the situation as described in the US document is misleading. The figures have never been verified by the Community, Spain or the Working Party, and, especially at Point IV, may well include surveillance or statistical monitoring measures as QRs. Thus the US document must be considered as unreliable as regards its conclusions.
3. The Community recalls that it has submitted a communication to the Working Party on this subject, circulated in document L/5936/Add.5. This information shows the following picture, at the four-digit level:

<u>Pre-accession</u>	<u>Agriculture</u>	<u>Industry</u>	<u>Total</u>
Items subject to quantitative restrictions	97	333	430
- of which QRs not applied to all GATT members		95	
<u>Post-accession</u>			
Items subject to quantitative restrictions	16	87	103
- of which QRs not applied to all GATT members		20	

It should further be noted that these latter figures cover a number of headings which have been partially liberalized.

4. The Community's analysis of the situation shows that there is a considerable reduction in the incidence of QRs applied by Spain following accession. The effects of this development on trade with GATT members can only be regarded as positive.

38. One member of the Working Party considered that since a customs union was an exceptional deviation from the m.f.n. principle of the GATT, the disciplines of Article XXIV should be strictly applied to it. The conditions stipulated in Article XXIV could not be presumed fulfilled simply because the customs union had resulted in some minor improvements in market access. In particular, his country's exports faced discriminatory quantitative restrictions in Spain and Portugal which contravened Articles XI and XIII. He considered that because these measures were GATT-inconsistent they could not be included in the assessment of the incidence of changes in "other regulations of commerce" which had to be carried out under Article XXIV:5(a). Moreover, even though Article XXIV:4 prohibited the introduction of new barriers to the trade of contracting parties with the constituent parties of the customs union, 7 new discriminatory restrictions had been introduced in Spain since accession to the Communities, and some global quotas had been transformed into discriminatory ones. His delegation called on the Communities to eliminate these restrictions immediately. It also reserved all its rights under the GATT. Furthermore, his delegation construed the concept of "compensatory adjustment" in Article XXIV:6 as implying that a tariff reduction on one item in some constituent territories of the customs union should be taken into account in calculating the amount of compensation for the increase in the tariffs applied to the same item in other constituent territories of the same customs union. It was therefore opposed to the view that "compensatory adjustment" implied that the amount of compensation should be estimated on the basis of the aggregate change of tariff levels applying to all items, including those not subject to concession. His delegation also rejected the European Communities' view that as a corollary of "compensatory adjustment", a customs union could claim "counter-compensation" from other contracting parties for the reduction of the general incidence of customs duties resulting from the customs union, since this concept was utterly without foundation in the GATT.

39. Some members of the Working Party stated that since acceding to the Communities, Spain had introduced discriminatory quantitative restrictions which contravened Articles XI, XIII and XXIV:4 as well as their countries' Protocols of Accession to the GATT under which contracting parties undertook not to increase the element of discrimination which they maintained on these countries' imports. Before acceding to the Communities, Spain had repeatedly notified the GATT that it maintained no discriminatory quantitative restrictions on these countries' imports and they had no reason to doubt the validity of these notifications. Since Article XXIV did not provide a waiver from obligations contained in Articles XI and XIII and did not allow or require a country acceding to a customs union to adopt the more restrictive trade régime of the customs union, they called on the Communities and Spain to eliminate all GATT-inconsistent measures, which in the case of one of these countries affected one quarter of its total exports to Spain. The same members of the Working Party considered that measures which were inconsistent with the GATT could not be traded off against the alleged reduction of other barriers and could not be included in the assessment of incidence of changes in "other regulations of commerce" required by Article XXIV:5(a) under which

only GATT-consistent measures should be taken into account. They did not consider that the Treaty of Accession was in conformity with the GATT and reserved their rights under the General Agreement.

40. Another member of the Working Party stated that the Treaty of Accession had led to a reduction of his country's market access to Spain and Portugal, in contravention of Article XXIV. Many of the improvements which allegedly benefited third countries, were in fact illusory or intangible.

41. One member of the Working Party reserved the rights of his delegation under the GATT, on differential treatment in favour of ACP countries, the effect that this could have on his country's exports and the application of quotas or variable levies on his country's exports of primary products, above all soya.

42. One member of the Working Party was not convinced that accession had resulted in a net reduction of duties and other regulations of commerce in the sense of Articles XXIV:4 and XXIV:5(a). While some liberalization had occurred in some areas, no agreed techniques had been adopted for evaluating the available data and as a result a complete comparison of pre- and post-accession duties and other regulations of commerce had not been possible, even though it was required under Article XXIV:5(a). With the trade coverage approach favoured by the European Communities, the large amount of trade which would take place under a slightly reduced tariff would be given more weight than the much more significant reduction in a lesser amount of trade which would result from a substantial increase in the tariff applicable to it. That is why the duties collected approach was a more reliable basis for conducting the assessment required by Article XXIV:5(a). The analysis which had been submitted to the Working Party, using the duties collected approach, indicated that the net effect of enlargement was negative. The same member of the Working Party considered also that the assessment of changes in duties and other regulations of commerce required an evaluation of the impact of enlargement on individual countries. In his country's case, accession had resulted in an overall increase in the barriers which it faced with the enlarged Communities. Moreover, the assessment should have included an evaluation of the effect of price and income support measures covered by Article XVI as well as of preferential trade. However, these had not been considered relevant by the Communities. Nevertheless, his delegation had taken careful note of some assurances which the Communities had made, notably in the case of sheepmeat where an undertaking had been made that existing suppliers may look to a régime of trade liberalization in the framework of the Communities.

43. The representative of the European Communities stated that it was for delegations which argued that new methodological techniques were necessary to assess the conformity of the enlarged customs union with Article XXIV, to demonstrate why traditional methods were inadequate. Delegations took the view that Article XXIV:5 required an examination of the incidence of enlargement on the trade of each individual contracting party, that the

"duties collected" approach be adopted for a precise assessment of the tariff incidence of accession which would also exclude preferential trade, and that the Working Party examine subsidies and other price support arrangements. They also considered that it would be indispensable for the implementation of trade liberalization measures to be reviewed at the end of the transitional period. The Communities believed that these new approaches were not required by Article XXIV:5 and that if new factors were considered relevant for the present examination, this would have consequences for future Working Parties operating under Article XXIV:5(b). More specifically, the Communities had always interpreted the requirements of Article XXIV:5(a) as applying to the enlarged customs union as a whole, on the one hand, and to the trade of this enlarged customs union with other contracting parties taken as a whole on the other. Thus the task of the Working Party was to examine the consequences of the measures taken by the EC/12 on the trade with other contracting parties taken collectively in terms of Article XXIV:5. This meant that the total trade of the 12 (and not just that of the new member States) had to be taken into account, and, on the other hand, problems which arose for individual contracting parties as a result of the formation of the customs union were to be considered in the overall context. Specific cases of impairment of tariff bindings were dealt with in negotiations under Article XXIV:6 which provided specific remedies for such situations.

44. The Communities had examined the question of tariff incidence in great detail. Whether it was the traditional balance sheet approach of tariff movements or the "duties collected" approach which was used, the Communities had shown that over 95 per cent of trade of the enlarged Communities with other contracting parties would experience either no change in customs duties or else lower customs duties as a result of accession. The amount of trade that would be subject to higher duties amounted to either 1.5 per cent or 0.5 per cent of total EC/12 trade, depending on the presentation used. It was obvious that the volume of trade involved was minuscule in relation to the overall trade of the enlarged Communities. The Communities failed to see how the Working Party could reach any conclusion other than that the conditions of Article XXIV:5(a) regarding tariff incidence had been comprehensively fulfilled. It had been suggested in the Working Party that tariff incidence be measured in terms of duty collections rather than by trade coverage. Duty collections were traditionally one of the methods employed in Article XXVIII negotiations, where the objective was to calculate precisely the value of concessions withdrawn and those offered as a substitute for them. The Communities did not accept, however, that this method was appropriate for an Article XXIV:5 examination whose objective was completely different. In the present case the "duties collected" method had been used to suggest that, despite the overall picture, the incidence of duties paid would be increased: but this analysis resulted from two doubtful propositions - first, that increases in unbound duties which are permitted in GATT could in some way result in a situation inconsistent with Article XXIV, and second, that large increases in incidence e.g. where variable levies replace bound duties, could be contrary to Article XXIV:5

even when compensation had been paid under Article XXIV:6. In addition, the argument put forward by other contracting parties on unbound duties did not seem to recognize the requirement, under Article XXIV:8, that Spanish and Portuguese duties had to align on those of the EC/10, or vice versa, or on some average duty rate. The solution chosen by the Communities minimized the increase in duties while offering substantial advantages to third countries in the form of new bindings. It was also questionable how far the notion of tariff incidence could be applied without some qualification in such a case. It was obvious that unbound duties could have been raised at any time before the formation of the customs union in order to enable the parties to claim, at a later date, that the tariff incidence had been reduced on enlargement: such a practice would however have made no economic sense, and the CONTRACTING PARTIES should not encourage manoeuvres of this kind when reaching conclusions as regards conformity with Article XXIV:5

45. On the question of other regulations of commerce, and in particular quantitative restrictions, the Communities agreed that Article XXIV did not provide a waiver from other provisions of the GATT. By the same token, however, the role of the Working Party in this context was to examine the situation in the light of Article XXIV rather than with respect to any other provision such as Articles XI or XIII. Contracting parties were free to reserve their GATT rights and to have recourse to other provisions on these questions. The Communities considered that no new quantitative restrictions had been applied by Spain or Portugal. The Communities also believed that the terms of Article XXIV:4 made it clear that not raising barriers to the trade of other contracting parties was an objective rather than an obligation. While it was clear that the application of such measures prior to accession lacked transparency, it was also clear that as a result of accession Spain had made a substantial move towards liberalization through the elimination of a substantial number of quantitative restrictions. Details of these measures were set out in L/5936/Add.5 and in Table V above. Overall the situation was that out of a total number of 430 quantitative restrictions applied before accession, 328 had already been or would be liberalized by the end of the transitional period. Thus the general incidence of these measures was positive on trade with other contracting parties. Some restrictions had previously been covered by a bilateral agreement and had never been the subject of any complaint in the GATT. Some of these restrictions had been liberalized de facto on an autonomous basis but they had remained legally in force. They would all be eliminated by the end of the transitional period. Thus the Communities could not accept the argument that accession had resulted in a more restrictive general incidence for quantitative restrictions.

IV. Conclusions and recommendations

46. As requested by the Council, the Working Party has conducted an examination of the terms of accession of Portugal and Spain to the European Communities, details of which are set out in the earlier sections of this report. The present conclusions and recommendations should therefore be read in conjunction with those sections, and in particular with the final statements summarized in Part III of the report.

47. Many members of the Working Party which took the floor considered that the European Communities had failed to demonstrate that, with respect to duties and other regulations of commerce, they had met their obligations under Article XXIV. Some were of the view that the available evidence pointed to higher duties being applied in the acceding countries after accession than before. They regretted that the lack of agreed techniques had made it impossible for a common assessment of changes in the incidence of duties to be conducted in the Working Party. In particular, they considered that the trade coverage method favoured by the European Communities did not provide an accurate picture of the incidence of tariff changes and that the duties collected approach should have been adopted instead because it made a precise assessment possible as required under Article XXIV:5(a). They also believed that the assessment of tariff incidence should exclude preferential trade since only trade subject to most-favoured-nation duties should be included in the assessment of changes in those duties. With respect to "other regulations of commerce", some members of the Working Party considered that on the basis of the available information the only conclusion that they could draw was that post-accession measures had a more restrictive incidence than pre-accession ones. They were of the view that, while some quantitative restrictions had been eliminated in Portugal and Spain as a result of their accession to the Communities, new restrictions inconsistent with the General Agreement, in particular Articles XI and XIII, had also been imposed. They therefore called on the Communities to eliminate all quantitative restrictions which were inconsistent with the General Agreement. Some members of the Working Party also stated that the extension of the Common Agricultural Policy and the Common Fisheries Policy to Portugal and Spain and in particular, of variable levies and price/income support measures, would substantially impair their trade.

48. The European Communities considered that the Treaty of Accession was fully consistent with the General Agreement, and in particular with Article XXIV:5(a) which was the particular concern of the Working Party. The accession of Portugal and Spain would result in a substantial opening of these countries' markets. The incidence of the tariffs of Portugal and Spain would be considerably reduced, which would benefit contracting parties as a whole. The Communities also considered that Article XXIV:5(a) did not require preferential trade to be excluded from the assessment of the general incidence of tariff changes and that changes in GSP for Spain and Portugal would benefit many contracting parties. As regards the duties collected approach, which had not been used in past examinations, this was certainly not more accurate than the traditional methods applied in previous cases. The Communities believed that Article XXIV:5 did not require a precise assessment as was the case in tariff negotiations, and the duties collected approach was equally flawed by methodological weaknesses. The European Communities did not agree that new quantitative restrictions had been introduced in Portugal and Spain after these countries' accession, but contracting parties which held this view were free to have recourse to Articles XXII and XXIII. On the contrary, there had been and would be substantial liberalization. The European Communities

did not think that the extension of the Common Agricultural Policy to Spain and Portugal would result in a more restrictive situation "on the whole": many other changes in the import régime for agricultural products would have positive effects.

49. Because of the divergent views expressed, the Working Party was unable to reach agreed conclusions as to the consistency of the Treaty with the General Agreement. It decided to forward to the Council, this report which summarizes the views expressed by its members during the discussion. It noted the fact that many members of the Working Party had reserved their rights under the General Agreement and that these rights would not be prejudiced by submission of the report.

50. The Working Party recommended that the CONTRACTING PARTIES invite the parties to the Treaty of Accession, consistent with normal practice, to furnish reports on the progress towards the completion of the customs union, including trade effects on third parties, every two years until such time as the provisions of the Treaty have been fully implemented. The Working Party noted that when received, the reports would be put on the agenda of the Council thus providing an opportunity for any delegation to raise points relating to the consistency of the Treaty with the GATT, and to have these examined.